



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MOP - 203549

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed on October 25, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Portage County Department of Human Services regarding three Medical Assistance (MA) / BadgerCare Plus overpayment claims, a hearing was held on December 15, 2021, by telephone.

Prior to the hearing, the agency concluded that one of the three overpayment claims was not recoverable and reduced the balance to \$0 (claim no. [REDACTED] for February 2016 through May 2016). In addition, the agency reduced the two other established overpayment claims to \$2,385.47 and \$2,768.87 respectively (claim nos. [REDACTED] and [REDACTED] for June 2016 through May 2017).

The issue remaining for determination is whether the agency correctly found that Petitioner and his spouse were overpaid a total of \$5,154.34 in BadgerCare Plus benefits for the time period June 2016 through May 2017 due to client error.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
By: [REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Portage County Department of Human Services  
817 Whiting Avenue  
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:  
Teresa A. Perez  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a married resident of Portage County who applied for BadgerCare Plus (BCP) in November 2015 as the primary person of a household that included his spouse, [REDACTED], and two minor children. Exhibit 7: About Your Benefits Notice dated 11/23/2015.
2. On November 23, 2015, the agency issued an “About Your Benefits” notice to Petitioner which stated that he, his spouse, and two minor children were eligible for BCP benefits as of November 1, 2015 and that if the household’s total monthly income (before taxes) increased to an amount in excess of \$2,020.83 (i.e., 100% FPL), he must report it by the 10<sup>th</sup> day of the next month. The same notice stated that the agency had the following income “on file for [the petitioner’s] household”: \$1,049.37 every other week in wages from [REDACTED] for [REDACTED] (Petitioner’s spouse) and \$485.23 each month in child support for [REDACTED]. This amounts to \$2,098.74 in gross wages during a four week period and household total monthly income (before taxes) of \$2,583.97. Exhibit 7: About Your Benefits Notice dated 11/23/2015.
3. In April 2016, Petitioner submitted updated verification of his spouse’s wages as part of a child care assistance program review. At that time, the agency determined that Petitioner’s gross monthly household wages were \$2,320 and that the household was eligible for continued eligibility under the earned income extension category. Exhibit 1: CARES case comments dated 4/26/2016.
4. By notice dated April 27, 2016, the agency advised Petitioner that he, his spouse and two children would continue to remain enrolled in BCP as of June 1, 2016 and that if the household’s total monthly income (before taxes) increased to an amount in excess of \$2,234.40 (i.e., 100% FPL), he must report it by the 10<sup>th</sup> day of the next month. Exhibit 13: About Your Benefits Notice dated 4/27/2016.
5. In September 2021, the agency determined that Petitioner’s December 2015 household income exceeded the reporting requirement, that the household did not report that increase, and that, as a result, Petitioner and his spouse received \$7,403.30 of BCP that they were not eligible to receive from February 1, 2016 through May 2017. This amount was broken down into the following three claims: Claim No. [REDACTED] for February 2016 through May 2016 (\$1,824.66); Claim No. [REDACTED] for June 2016 through May 2017 (\$2,607.67); and Claim No. [REDACTED] for June 2016 through May 2017 (\$2,970.97). Exhibit 1: CARES case comments dated 9/16/2021 and Exhibit 2: Overpayment docs.
6. The agency informed Petitioner of the overpayment claims by notices dated September 17, 2021. Exhibit 12: Overpayment Notices.
7. After Petitioner received the overpayment notices, his spouse contacted the agency and the agency reviewed the determination. As part of that review, the agency found that it made an error in the household’s “original 2015 budget pre tax deductions” by applying a \$7 per check deduction that was non-allowable and that benefits were overpaid to Petitioner and his spouse due to that agency error from February 2016 through June 2016. Accordingly, the agency reduced Claim No. [REDACTED] to \$0 and reduced Claim Nos. [REDACTED] to [REDACTED] to \$2,385.47 and \$2,768.87 respectively. Exhibit 1: CARES case comments dated 9/16/2021 and Exhibit 9: BRITS claims.
8. Petitioner filed a timely request for fair hearing with the Division of Hearings and Appeals.

## DISCUSSION

The recovery of overpaid BadgerCare Plus benefits is authorized by Wis. Stat., §49.497(1) as follows:

- (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:
  1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
  2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
  3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the BadgerCare Plus Handbook (BCPH) §28.2. In other words, an overpayment is recoverable only if it is caused by the BCP recipient's error or omission. Overpayments caused by non-member errors, including errors made by the agency, are not recoverable. *Id.* at §28.3.

The BCP income eligibility limit for adults is typically 100% of the federal poverty level (FPL). See Wis. Stat. § 49.471(4)(a) and BCPH §§16.1 and 18.1. Caregiver parents may remain eligible for BCP if their income exceeds that amount due to an increase in earned income but must have been enrolled in BCP with income at or below 100% FPL for three of the six months immediately preceding the month of the income increase. BCPH §18.2. BCP recipients must report increases in household income that may affect their program eligibility and must do so by the 10th of the month following the month in which the increase occurs. See *Id.* at §27.3.

In a hearing concerning a BCP overpayment determination, the agency has the burden of proof. For the agency to prevail, a preponderance of the evidence in the record must demonstrate the propriety of the agency's recovery action. See Wis. Admin. Code §HA 3.09(4).

There is no dispute as to Petitioner's household income or the agency's contention that the household was ineligible for BCP during the overpayment claim time periods. The agency conceded that Petitioner was overpaid due to agency error from February 2016 through June 2016 as a result of the agency overbudgeting Petitioner's allowable deductions but contended that the overpayment of benefits from then on was due to Petitioner error. When asked why that was the correct start month for the recoverable overpayment, the agency representative surmised that the agency corrected its error at that time. Moreover, she explained that Petitioner and his spouse were not eligible for BCP coverage through an earned income extension because household income was not under 100% FPL for three of the six months prior to the month of the income increase.

Petitioner's spouse, who appeared at the hearing, persuasively argued that the household would never have been placed in an extension if not for the agency's original budgeting error. I agree. I also noted that the

agency argued that Petitioner's household did not comply with its income reporting requirement; however, the record does not support that. As noted in the Findings of Fact, the "About Your Benefits" notice dated November 23, 2015 instructed Petitioner as follows: "If your household's total monthly income (before taxes) goes over \$2,020.83, you must report it by the 10<sup>th</sup> day of the next month." But, the same notice shows that the agency was already aware that Petitioner's household had at least \$2,098.74 in gross wages and \$2,583.97 in total gross income. Thus, Petitioner had already complied with the income reporting requirement as of the date of that notice. Similarly, as reflected in the agency's case comments, Petitioner submitted verification of his spouse's wages in April 2016 and the agency determined on April 26, 2017, based on that verification, that Petitioner's gross monthly household wages totaled \$2,320. Yet, in the "About Your Benefits" notice dated April 27, 2016, the agency instructed Petitioner that he must report to the agency if the "household's total monthly income (before taxes) goes over \$2,234.40". Again, Petitioner had already complied with the reporting requirement.

For these reasons, I find that a preponderance of the evidence in the record does not establish that Petitioner was overpaid due to client error. Although

### **CONCLUSIONS OF LAW**

A preponderance of the evidence in the record does not establish that BCP benefits were paid to or on behalf of Petitioner and his spouse from June 2016 through May 2017 due to client error. Accordingly, BCP overpayment claim no. [REDACTED] for June 2016 through May 2017 (\$2,385.47) and claim no. [REDACTED] for June 2016 through May 2017 (\$2768.87) are not recoverable.

**THEREFORE, it is**

### **ORDERED**

That the matter is remanded to the agency to rescind BadgerCare Plus overpayment claim nos. [REDACTED] and [REDACTED] totaling \$5,154.34 for the time period June 2016 through May 2017; to refund any monies previously collected and applied towards these claims, if any; and to send Petitioner written confirmation of the rescission of the claims. The agency shall comply with this order within ten days of the date of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES

IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

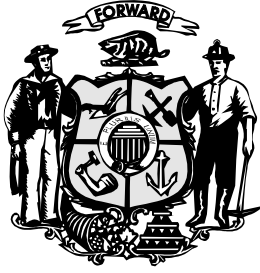
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 11th day of January, 2022

  
s

---

Teresa A. Perez  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
5<sup>th</sup> Floor North  
4822 Madison Yards Way  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 11, 2022.

Portage County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability